Filed 2/5/03 Isabel Pacific Properties v. City Council of the City of Los Angeles CA2/7

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ISABEL PACIFIC PROPERTIES II, LLC, et al.,

Plaintiffs and Respondents,

v.

CITY COUNCIL OF THE CITY OF LOS ANGELES et al.,

Defendants and Appellants.

AVALONBAY COMMUNITIES, INC.,

Real Party in Interest and Appellant.

B157423

(Super. Ct. No. BC255809)

APPEAL from a judgment of the Superior Court for the County of Los Angeles, Dzintra I. Janavs, Judge. Reversed.

Rockard J. Delgadillo, City Attorney, Susan D. Pfann, Jack L. Brown and Jeri L. Burge, Assistant City Attorneys, for Defendants and Appellants City Council of the City of Los Angeles and City of Los Angeles.

Latham & Watkins, James L. Arnone, Damon P. Mamalakis and Stephanie E. Ord for Real Party in Interest and Appellant AvalonBay Communities, Inc.

Jeffer, Mangels, Butler & Marmaro, Benjamin M. Reznik and Pamela S. Schmidt for Plaintiffs and Respondents Isabel Pacific Properties II, LLC et al.

The Los Angeles City Council (Council) approved a proposed apartment complex on a vacant 4.5 acre parcel in a 150 acre industrial park in west Los Angeles despite an adverse recommendation from the City's Planning Commission. Plaintiffs, owners and operators of businesses in the industrial park, filed a petition for writ of mandate and complaint for declaratory relief seeking to overturn the Council's action. The trial court granted the petition and entered judgment in plaintiffs' favor. Because the Council's approval of the project was based on substantial evidence and was not unreasonable, arbitrary or an abuse of discretion, we reverse the judgment of the trial court, including its issuance of a writ of mandate.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Proposed Project*

AvalonBay Communities, Inc. (AvalonBay) sought approval from defendants City of Los Angeles (City) and Council[1] to develop a 309-unit apartment complex on Westlawn Avenue in west Los Angeles. The proposed project area (the Project) consists of a 4.5 acre parcel in a 150 acre tract designated and zoned light industrial. AvalonBay chose the site because (a) the area has a serious imbalance in jobs and housing and a strong demand for new rental housing; (b) the area is in transition from industrial land uses to mixed commercial and residential land uses; (c) AvalonBay has a strong track record of developing successful "in-fill" housing projects in areas needing rental housing close to jobs. A single-family residential neighborhood is located one block east of the Project; and the large Playa Vista development, which is under construction and will

---

[1] Real party in interest AvalonBay and the City defendants are hereafter referred to collectively as "defendants."

include 9,839 residential units as well as office and other uses, is one block south of the Project.

2. *The City Approval Process*

Because the light industrial designation and M2 zoning do not permit residential use, before the Project could proceed a general plan amendment and change in the zoning ordinance were necessary. AvalonBay requested the City's general plan be amended to designate the parcel as "neighborhood commercial" and a zoning ordinance enacted to similarly change the zoning to "neighborhood commercial" (C2). The "neighborhood commercial" land use designation permits apartment houses as well as business uses. (L.A. Mun. Code, § 12.14, subd. (A)(4).)

A draft Environmental Impact Report (EIR) was prepared, and public comment was solicited and received. Although some comments voiced concerns about the effect of surrounding industrial uses on the Project, the EIR concluded the Project would cause no significant environmental impacts. It also concluded that the "paper" inconsistency in land use designations could be mitigated by an amendment to the general plan and accompanying zoning ordinance, height district plan and site plan approval.

The City Planning Department held a public hearing and recommended disapproval of the Project on November 28, 2000. The director of planning concluded the Project was not consistent with the general plan because it would threaten the continued viability of industrial uses in the area. The City Planning Commission voted unanimously to uphold the Planning Department's recommendation.

AvalonBay appealed the City Planning Commission's decision to the Council. The Council's Planning and Land Use Management (PLUM) committee held a hearing on the matter on May 15, 2001. A majority of the PLUM committee voted to uphold the Planning Commission's decision and submitted a "majority report" to the full council that adopted the Planning Commission's findings and recommended denial of AvalonBay's appeal. Council member Mike Hernandez prepared a "minority report" recommending certification of the EIR and approval of the Project. Hernandez submitted his own

findings, including a finding that "the subject site has been vacant for at least several years [and] is no longer suitable for industrial use."

On May 29, 2001 the Council adopted the PLUM committee minority report, approved the site plan and the Project and certified and adopted the EIR. On June 27, 2001 the Council voted to "recertify" the EIR and adopt findings under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., and the mitigation monitoring program. It also adopted findings supporting the general plan amendment, which changed the Project area designation to "neighborhood commercial," the zoning ordinance and the height district change.

On July 10, 2001 the Council approved a resolution adopting the zoning ordinance and general plan amendment. The zoning ordinance included several qualifications, or "[Q] conditions," including one providing that "'[t]he use of the subject property shall be limited to the construction, use and maintenance of 309 residential apartment units.'" (Underscore omitted.)

3. *The Petition for Writ of Mandate*

On August 10, 2001 plaintiffs filed a petition for writ of mandate and complaint for declaratory and injunctive relief in the superior court. After briefing and argument the trial court granted the petition for a peremptory writ to set aside the City's certification of the EIR and adoption of the EIR findings and to set aside the City's approval of the Project including the general plan amendment, the height district designation change, the zoning ordinance and the site plan review approval. The trial court found (1) the zoning change was inconsistent with the general plan and constituted impermissible "spot zoning"; (2) the general plan, as amended, was internally inconsistent; and (3) the EIR conclusion that the Project was compatible with the surrounding uses was not supported by substantial evidence.[2] Judgment was entered in favor of plaintiffs on March 19, 2002.

---

[2] In their petition for writ of mandate, plaintiffs contended the City's approval of the

CONTENTIONS

Defendants contend the trial court erred in issuing a peremptory writ of mandate overturning the Council's approval of the Project because the Council's action was supported by substantial evidence and within its broad discretion. Plaintiffs contend: (1) the Council's approval of the Project constituted illegal "spot zoning"; (2) the zoning ordinance is inconsistent with the general plan's designation of the property as neighborhood commercial; (3) the Project impermissibly creates a residential area within an industrial park that renders the general plan internally inconsistent; (4) the EIR is inadequate both because it fails to address likely future physical changes in the area and because its conclusion that the Project will be compatible with the surrounding uses is contradicted by the Council's findings; and (5) the Council's finding that the potential impacts of the Project on surrounding industrial uses has been mitigated is not supported by substantial evidence.

DISCUSSION

1. *Standard of Review*

In a mandamus action challenging the legislative decision of a local agency, we review the administrative record de novo and are not bound by the conclusions of the trial court. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1375-1376; *McGill v. Regents of the University of California* (1996) 44 Cal.App.4th 1776, 1786 ["In mandamus actions, the trial court and appeal court perform the same function."].) We accord great deference to the City's legislative discretion in making land-use decisions; the City's decision will be affirmed unless we find a prejudicial abuse of discretion. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

Project was procedurally, as well as substantively improper. The trial court ruled the procedural issues were moot in light of its ruling on the substantive issues. On appeal, plaintiffs have waived their procedural arguments.

In a case where the legislative agency is alleged to have violated CEQA, we will affirm the agency's determination if it is supported by "any substantial evidence." (*Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1620; *Hosford v. State Personnel Bd.* (1977) 74 Cal.App.3d 302, 307 [substantial evidence is "'relevant evidence that a reasonable mind might accept as adequate to support a conclusion'"]; *Ofsevit v. Trustees of Cal. State University & Colleges* (1978) 21 Cal.3d 763, 773, fn. 9 ["'Substantial' evidence is evidence of '"ponderable legal significance . . . reasonable in nature, credible and of solid value."'"].)

2. *Characterizing the Council's Action as "Spot Zoning" Does Not Invalidate Its Approval of the Project*

In *Wilkins v. City of San Bernardino* (1946) 29 Cal.2d 332 (*Wilkins*), the Supreme Court held, "So-called 'spot' zoning results in the creation of two types of 'islands.' [T]he objectionable type arises when the zoning authority improperly limits the use which may be made of a small parcel located in the center of an unrestricted area. The second type of 'island' results when most of a large district is devoted to a limited or restricted use, but additional uses are permitted in one or more 'spots' in the district." (*Id.* at p. 341.) Relying on *Wilkins*, plaintiffs contend the Council's approval of the Project amounts to illegal "spot zoning" because the Council's actions had the effect of limiting use of the property.

It is undisputed the zoning of the Project has created an "island" within an industrial park. However, characterizing the Council's action as "spot zoning" is the beginning, not the end of the inquiry. "Spot zoning" is illegal only when the legislative body acts unreasonably or without substantial evidence. (*Viso v. State of California* (1979) 92 Cal.App.3d 15, 22 ["Even where a small island is created in the midst of less restrictive zoning, the zoning may be upheld where rational reason in the public benefit exists for such a classification"]; *Wilkins, supra,* 29 Cal.2d at p. 341 [illegality arises when agency "*improperly limits*" use of "island"].) Whether or not the label "spot zoning" is applied to the Council's action, "every intendment is in favor of the validity of

the action of the legislative authority, which will not be overthrown unless plaintiff produces evidence establishing physical facts justifying, or rather requiring, the conclusion that the ordinance is as a matter of law unreasonable and invalid." (*Robinson v. City of Los Angeles* (1956) 146 Cal.App.2d 810, 815.)

3. *The Zoning Ordinance Is Not Inconsistent With the General Plan*

Government Code section 65300 provides, "Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city . . . ." The general plan must set out the city's development policies and objectives, including specific elements such as land use and traffic circulation. (Gov. Code, § 65302, subd. (a).) All city zoning ordinances must be consistent with the general plan. (Gov. Code, § 65860, subd. (a)(ii) [ordinances must be "compatible with the objectives, policies, general land uses and programs specified" in the general plan].) Ordinances that are inconsistent with the general plan are invalid when enacted. (Gov. Code, § 65860; *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 544; *deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1210.)

Plaintiffs contend the "[Q] condition" in the zoning ordinance, limiting development to 309 residential apartment units, renders the zoning on the property "residential," rather than commercial, and thus creates a conflict with the general plan as amended, which designates the property as "neighborhood commercial." Analysis of the applicable provisions of the general plan and related zoning classifications belies this argument.[3]

The amendment to the general plan changed the designation of the Project from "light industrial" to "neighborhood commercial." This designation permits zoning C1,

---

[3] Defendants contend plaintiffs failed to exhaust their administrative remedies on this issue. We need not consider this procedural argument because we find against plaintiffs on the merits.

C1.5, C4 and [Q]C2.[4] (General Plan Framework Element, pp. 3-21 to 3-23.) Zone C2 allows, "Any use permitted in the C1.5 Limited Commercial Zone." (L.A. Mun. Code, § 12.14, subd. (A)(4).) Zone C1.5 permits "Any single-family dwelling, two-family dwelling or apartment house use permitted in the R4 Multiple Dwelling Zone . . . ." (L.A. Mun. Code, § 12.13.5, subd. (A)(1).) The R4 zone permits "Any use permitted in the 'R3' Multiple Dwelling Zone." (L.A. Mun. Code, § 12.11, subd. (A)(1).) Finally, the R3 zone permits "apartment houses." (L.A. Mun. Code, § 12.10, subd. (A)(4).) By following this statutory daisy chain, it cannot be disputed that "apartment houses" are a use permitted by right in zone C2.[5]

The "[Q] condition" at issue states "the use of the property shall be limited to the construction, use and maintenance of 309 residential apartment units." The general plan's description of "neighborhood districts" permits [Q]-conditioned C2 uses without limiting the restrictions that may be imposed by such conditions. Section 12.32, subdivision (2)(a), of the Los Angeles Municipal Code provides: "provision may be made in a zoning ordinance that the property not be utilized for all the uses ordinarily permitted in a particular zone classification . . . ." Because the C2 zone, and hence the neighborhood commercial designation in the general plan, permits residential apartment units with or without a "[Q] condition," there is no inconsistency between the zoning ordinance and the general plan.[6]

---

[4] The general plan refers to the designation at issue as "neighborhood districts" rather than "neighborhood commercial." There is no dispute those two designations are the same.

[5] Plaintiffs contend the zoning ordinance is simply a ploy to allow residential development in an industrial area under the guise of a commercial zoning designation. However, the motives of the parties do not change our analysis. Although AvalonBay may well have thought it would be easier to obtain approval for C2 zoning than for a purely residential zoning designation, apartment buildings are permitted in neighborhood commercial areas as a matter of right.

[6] We agree with the trial court that *Warner Ridge Associates v. City of Los Angeles* (Dec. 31, 1991, B052835) opinion ordered nonpublished March 12, 1992, does not

4. *The General Plan Amendment Does Not Render the General Plan Internally Inconsistent*

Government Code section 65300.5 provides that a general plan must be internally consistent. "[A] general plan must be *reasonably* consistent and integrated on its face. A document that, on its face, displays *substantial contradictions and inconsistencies* cannot serve as an effective plan because those subject to the plan cannot tell what it says should happen or not happen." (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97, italics added.) In *Concerned Citizens of Calaveras County* substantial inconsistencies did exist: One portion of the plan stated "current county roads will be able to accommodate projected traffic without significant problems," and another portion stated "'problems [with country roads] will surface in future years as homes and businesses are constructed.'" (*Id.* at p. 98.) However, minor inconsistencies will not invalidate a general plan as long as it serves its purpose as a planning document. (See *id.* at p. 97.)

Plaintiffs contend the general plan amendment, redesignating the Project as neighborhood commercial, created an impermissible internal inconsistency because the redesignation conflicts with the plan's policies of preserving its industrial property and changing industrially planned property to another designation only when industrial uses are no longer viable. (General Plan Framework Element, pp. 3-33 to 3-14.) However, the Council found that the 4.5 acre site for the Project "has sat vacant for several years

---

compel a different result. The case has been depublished and therefore has no precedential value. (Cal. Rules of Court, rule 977 [depublished opinion "shall not be cited or relied on by a court or a party in any other action or proceeding except . . . when the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel . . . ."].) Contrary to plaintiffs' contention, collateral estoppel does not apply because the legal issue in this case is not identical to the one litigated in *Warner Ridge*. (*Campbell v. Scripps Bank* (2000) 78 Cal.App.4th 1328, 1334 [in order for collateral estoppel to apply, "'the issue necessarily decided in the previous suit [must be] identical to the issue sought to be relitigated'"].) In *Warner Ridge*, unlike the present case, the City zoned the subject property in a way that was *not* one of the zones permitted under the general plan designation for the property.

and thus must be considered no longer viable for industrial functions." This finding is supported by substantial evidence. Indeed, the undisputed fact that the property has been vacant for several years while zoned M2 is, in and of itself, sufficient evidence to support a finding that the property is no longer viable for industrial uses. Although there was evidence to the contrary, the Council was free to weigh the evidence and reach its own conclusion. We may not disturb that conclusion even if "an opposite conclusion would have been equally or more reasonable." (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights*).)

The general plan specifically provides for redesignation of industrial land that is no longer viable for industrial use. (General Plan Framework Element, pp. 3-33 to 3-14.) Redesignating the property as neighborhood commercial created no inconsistency in the general plan.

5. *The EIR Is Adequate*

a. Standard of Review

An EIR is required by CEQA if a proposed project will have a significant effect on the environment. (Pub. Resources Code, § 21151, subd. (a).) The EIR must identify and analyze potentially significant environment impacts from a proposed project and methods by which those impacts can be mitigated or avoided. (Cal. Code Regs., tit. 14, § 15362.)[7] "'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." (Pub. Resources Code, § 21068; Guidelines, § 15002, subd. (g).) The Legislature has determined that, "The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (Pub. Resources Code, § 21061.)

---

[7] The provisions of CEQA are implemented by the CEQA guidelines, California Code of Regulations, title 14, section 15000 et seq. (Guidelines).

In *Laurel Heights, supra,* 47 Cal.3d 376, the Supreme Court explained the EIR process: "Under CEQA, the public is notified that a draft EIR is being prepared [citation], and the draft EIR is evaluated in light of comments received. [Citation.] The lead agency then prepares a final EIR incorporating comments on the draft EIR and the agency's responses to significant environmental points raised in the review process. [Citations; fn. omitted.] The lead agency must certify that the final EIR has been completed in compliance with CEQA and that the information in the final EIR was considered by the agency before approving the project. [Citation.] Before approving the project, the agency must also find either that the project's significant environmental effects identified in the EIR have been avoided or mitigated, or that unmitigated effects are outweighed by the project's benefits. [Citations.] [¶] . . . Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government." (*Id.* at pp. 391-392.)

Although an agency must respond to each significant effect identified in the EIR, the information in the EIR does not control the agency's ultimate discretion on a project. (Guidelines, § 15121, subd. (b).) In reviewing a local agency's decision to certify an EIR under CEQA, our inquiry "'shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' [Fn. omitted.] As a result of this standard, 'The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document.' [Citation.] [¶] This standard of review is consistent with the requirement that the agency's approval of an EIR 'shall be supported by substantial evidence in the record.' [Citation.] In applying the substantial evidence standard, 'the

reviewing court must resolve reasonable doubts in favor of the administrative finding and decision.' [Citation.] The Guidelines define 'substantial evidence' as 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' (Guidelines, § 15384, subd. (a).) [¶] A court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. [Citation.]" (*Laurel Heights, supra,* 47 Cal.3d at pp. 392-393.)

b. The EIR Was Not Required to Consider Non-Physical Effects of the Project or Effects on the Project of Neighboring Industrial Uses

Under CEQA, an EIR must address only those project impacts that would cause "physical changes in the environment." (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1019; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810, 828, disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570, fn. 2.) Indeed, the CEQA Guidelines expressly provide that "[e]conomic and social changes resulting from a project shall *not* be treated as significant effects on the environment." (Guidelines, § 15064, subd. (e); *Friends of Davis*, at p. 1019.)

The trial court disregarded this limitation in finding the EIR inadequate. The court found "[e]vidence was presented that the commercial and industrial uses in the industrial park may suffer from the presence of the apartment complex because their 24-hour operations are likely to be inhibited and some businesses may be forced to move and the residential use will impinge on the future expansion plans of others. [¶] Thus, the record contains ample evidence that the project is incompatible with the surrounding industrial park, including letters from adjacent and nearby businesses describing the anticipated effects of the project on business and/or future expansion plans, [citations] statements by studio owners describing problems posed by locating a film studio in a residential neighborhood, [citations] letters from the LAPD re conflict between the industrial and residential uses, [citations] and so on. [¶] These impacts of the project on the

surrounding community were not analyzed in the EIR. [¶] The EIR's failure to analyze potential physical impacts of the project on existing land uses in the surrounding community renders it deficient."

The purpose of the EIR is to evaluate physical effects on the environment *caused by the project*.[8] The so-called "physical effects" claimed by the plaintiffs are, in fact, social and economic changes outside the scope of CEQA and the EIR. (*Friends of Davis v. City of Davis, supra,* 83 Cal.App.4th at pp. 1019-1020.) Even that evidence consists of speculative assertions that surrounding industrial users "*may* be unable to expand or otherwise intensify their uses, which *could be* detrimental to their continued viability . . . which *may* ultimately lead to their closure or relocation."

In *City of Pasadena v. State of California, supra,* 14 Cal.App.4th 810, disapproved on other grounds in *Western State Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, the City of Pasadena objected to the opening of a parole office in its civic center because the increased risk of crime associated with the presence of parolees constituted a "significant environmental effect" under CEQA. (*Id.* at pp. 817-818.) Much like the plaintiffs in this case, the City argued that "some people are pollutants" under CEQA. (*Id.* at p. 817.) The Court of Appeal rejected that assertion, holding that neither crime nor vandalism constituted physical environmental effects. (*Id.* at p. 829.) "While this record may establish a possibility of a social impact from the location of the parole office, it does not establish the requisite physical change. The only record regarding vandalism, which might be considered a physical impact, is the vague hearsay account by the mayor of Monterey Park. This does not constitute substantial evidence under CEQA." (*Id.* at p. 830 ["Mere uncorroborated opinion or rumor does not constitute substantial evidence" under CEQA]; see also Guidelines, § 15384, subd. (a).) Similarly, plaintiffs' vague

---

8 Any of noise or light impacts *on* the Project *by* the neighboring industrial users therefore was not a required part of the EIR.

speculation that the proposed project *might* cause some of the surrounding businesses to leave the area does not constitute substantial evidence of a physical environmental effect.

In *Friends of Davis v. City of Davis, supra,* 83 Cal.App.4th 1004, the plaintiff sought a writ of mandate because the EIR for a retail development did not consider the effects of a national chain bookstore as a possible tenant. (*Id.* at p. 1019.) The Court of Appeal rejected plaintiff's argument, holding that the economic and social effects on competitors do not constitute a physical environmental effect. (*Ibid.*) Although economic and social changes may sometimes cause indirect physical effects on the environment, "[a]n indirect physical change may be considered [under CEQA] only if it is reasonably likely to occur. [Citation.] A change which is speculative or unlikely to occur is not reasonably foreseeable. [Citation.]" (*Id.* at pp. 1019-1020.)

Like the plaintiffs in *City of Pasadena* and *Friends of Davis*, plaintiffs point only to evidence of possible social and economic changes as a result of the City's approval of the Project. Any evidence that physical changes will occur -- presumably in the form of industrial tenants leaving the area and creating vacancies -- is based upon unsubstantiated assumptions that the mitigation measures designed into the Project will fail. "Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support[ed] by facts." (Guidelines, § 15064, subd. (f)(5).) Plaintiffs have not presented substantial evidence to support a finding that the EIR is inadequate because it failed to include an analysis of the Project's possible indirect physical effects on the surrounding land users.

c. The Council's Findings Are Not Inconsistent With the EIR

The Council's EIR findings state, "The proposed Project would permit a land use which is not compatible with that of the surrounding industrial properties. The proposed residential Project would reduce the ability of surrounding properties to function as allowed by their zoning. This impact may be reduced by mitigation measures imposed

by the decision makers, including the use of above-grade parking structures, block walls, setbacks, landscape buffers, structural wall insulation, and dual-paned windows."

Plaintiffs contend this finding is inconsistent with the EIR itself and constitutes an admission that the EIR is an inadequate informational document. However, the EIR expressly identified the compatibility issue and acknowledged "the potential for existing or future industrial uses in the area to conflict with the proposed residential use." Both the EIR and the Council's findings concluded any land use incompatibility could be mitigated or rendered insignificant by design features such as walls and landscaping.

Moreover, the findings also state, "The EIR and this Council have found that land use incompatibility has been mitigated to a less than significant level. However, even if the impact of land use incompatibility had remained at an unavoidably significant level after imposition of all feasible mitigation, nevertheless this Council would, and does, find that the burden of that impact is overridden by any of the overriding considerations listed in this Statement of Overriding Considerations." The overriding considerations include the imbalance of jobs and housing in the Project area, the area's housing needs and the fact that "the transition of the area into an employment intensive commercial enclave calls for housing to round out the transition into a fully integrated mixed use community." Taken as a whole, the Council's findings are substantially consistent with the EIR. (See *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 241 [inconsistencies in findings may be resolved by reference to EIR itself].)

d. Substantial Evidence Supports the Council's Finding That Any Land Use Incompatibilities Can Be Mitigated

The land use issues considered in the EIR were (a) whether the Project was consistent with the current zoning designation; (b) whether the Project was consistent with the current general plan designation; and (c) whether the Project "disrupts or divides established neighborhoods, communities or existing land uses in the immediate vicinity

of the project site."[9] The EIR concluded there would not be significant physical effects on the surrounding land uses because of the buffering effects of the street, planned walls and landscaping.[10] That conclusion is supported by substantial evidence including acoustic studies. Accordingly, the only mitigation measures proposed by the EIR were "paper" measures -- amendment of the general plan and zoning designation to conform with the new use.

The Council also identified potential physical incompatibilities that it found could be effectively mitigated and proceeded to make the necessary "paper" changes by amendment of the general plan and zoning designation that render any land use inconsistencies insignificant. Substantial evidence supports the Council's conclusions.

At the hearings on the Project, Philip Simmons of AvalonBay gave extensive testimony regarding AvalonBay's development experience, its reasons for choosing the property for its project, its experience with in-fill housing, the design mitigation measures in the Project and its analysis that the area was in transition away from industrial uses.[11] Although this testimony was obviously self-serving, it was no more so than the testimony relied on by plaintiffs. Moreover, the City Council was entitled to draw the entirely reasonable inference that AvalonBay would not propose an apartment complex at this site if it believed there were significant land-use incompatibilities. Additionally, the PLUM committee's minority report, like the EIR and the Council's findings, concluded that "the project contains adequate buffers to protect future residents and the surrounding industrial community."

---

[9] The third criterion refers only to *physical* division or disruption of neighboring land uses. (*Friends of Davis v. City of Davis*, *supra*, 83 Cal.App.4th at p. 1019.)

[10] This conclusion is not substantially inconsistent with the Council's findings, which also identified potential physical incompatibilities that could be effectively mitigated.

[11] This conclusion was buttressed by letters submitted by architects Daniel Cartagena, Joel B. Miller and Brian Ten and realtor Sue Levitt, as well as by neighboring landowners and other supporters of the Project.

We must find substantial evidence exists where "a fair argument can be made" to support the Council's findings, even if the weight of the evidence is to the contrary. (*Laurel Heights, supra,* 47 Cal.3d at p. 393.) "A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so. Our limited function is consistent with the principle that 'The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations.' [Citation.]" (*Ibid.*) In this case, the Council's findings are supported by substantial evidence and therefore may not be disturbed.

DISPOSITION

The judgment of the trial court is reversed. Defendants are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

JOHNSON J. WOODS, J.